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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

Nos. 403-404.

GEORGE ASHWANDER ET AL., *Petitioners,*

v.

TENNESSEE VALLEY AUTHORITY ET AL.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR RESPONDENT, CITY OF FLORENCE.

W. H. MITCHELL,
City Attorney,
Solicitor for Respondent, City of Florence.

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STATEMENT OF THE CASE.

This brief, filed on behalf of the City of Florence, is directed primarily to specific phases of the above-titled case involving the interest of the City of Florence which petitioners contend, but the City of Florence denies, are properly included in this litigation. They are: (a) The right of

the City to buy and the Tennessee Valley Authority to sell and deliver to the City a portion of the electric energy available at the nearby government-owned Wilson Dam, according to a contract a model of which appears in the record (R. 1202); (b) The right of the City to obtain funds from the Public Works Administration under Title 2 of the National Industrial Recovery Act (48 Stat. 195), for the purpose of erecting its own municipal distribution system which it will use to distribute the electric energy it purchases from the Tennessee Valley Authority.

The City of Florence contends, as will be more fully discussed hereafter, that inclusion of these questions for settlement in this case is improper. But if the Court should consider these questions, the City contends that under the Alabama Constitution, statutes and decisions of the Supreme Court of Alabama it has the power to conclude the contracts in question (*infra*, at 5-6-7), and the sole question is the right of the Tennessee Valley Authority to sell and deliver to the City the available energy at Wilson Dam. On this question the City of Florence relies upon the arguments and citations filed in the brief of the Tennessee Valley Authority. However, it wishes to call particular attention to the fact that the boundaries of the City of Florence practically touch the government reservation on which the dam is located, and that the petitioners' company has purchased from agencies of the Government a portion of the Wilson Dam electric energy both before and after the passage of the Tennessee Valley Authority Act.

In September, 1934, George Ashwander and others who were preferred stockholders of Alabama Power Company, filed their injunction bill in the Eighth Judicial Circuit Court of Alabama and it was removed to the District Court of the United States for the Northern District of Alabama. The object of the suit was to obtain relief which complainants said should have been sought by Alabama Power Company as a corporation. The defendants were Tennessee Valley Authority and members of the board composing

that corporation, and a number of municipalities in northern Alabama, including the City of Florence. The Alabama Power Company and the trustee in its outstanding mortgage were joined as defendants. The defendant municipalities, including the City of Florence, filed motions to dismiss the bill (R. 275, 280). Among other grounds in its motion the City of Florence asserted:

> Want of equity;
> Want of right in complainants to sue for alleged cause of action accruing to corporation;
> Multifariousness;
> Misjoinder of causes;
> Misjoinder of parties.

The several motions were overruled (R. 371). The case was tried on its merits and a final decree was rendered on March 2, 1935. By the terms of the decree certain contracts between Alabama Power Company and Tennessee Valley Authority were annulled, and their performance was enjoined. *In addition to that, the Court held that a proposed purchase of power from Tennessee Valley Authority by the City of Florence was illegal, and that a proposed loan and grant agreement between the Federal Emergency Administration of Public Works and the City of Florence (with the proceeds of which the City of Florence was about to build a power distribution system) was illegal.* And the District Court (R. 382) enjoined the City of Florence:

> a. From entering into or performing under contract with Tennessee Valley Authority for the purchase from the latter of energy; and
> b. From accepting or expending any loan funds received from the Tennessee Valley Authority, the Federal Administration of Public Works or other agency of the United States for the purpose of constructing a public distribution system for the distribution of electric power to be supplied by the Tennessee Valley Authority, directly or indirectly.

It is this decree that was reversed by the Circuit Court of Appeals.

The said loan and grant agreement between the Federal Public Works Administration and the City of Florence (R. 1239) has been cancelled and a new agreement concluded which does not include any provision requiring that the City shall contract to purchase electric energy from the Tennessee Valley Authority.[1] Public Works Administration Docket 4259.

Petitioners' corporation, the Alabama Power Company, has filed two suits in the Supreme Court of the District of Columbia against the Federal Administrator of Public Works and other Federal officials to enjoin loans and grants by the Federal Public Works Administration to certain of the defendant municipalities. On July 25, 1935, such a suit (Equity No. 59071) was filed concerning loans to Florence, Sheffield, Tuscumbia and Decatur. *Alabama Power Company* v. *Ickes, et al.* On October 4, 1935, another suit (Equity No. 59671) was filed concerning loans to Guntersville, Hartsell and Russellville. The bills were dismissed, but stay was granted pending decision on appeal in the Court of Appeals of the District of Columbia.

Wilson Dam is a government-owned structure operated by Tennessee Valley Authority. It is in combination a navigation and power dam with a large generating capacity of electric energy, provided to supply the Government national defense facilities at Muscle Shoals. It serves the navigation locks in the dam, the government village at United States Nitrate Plant No. 2 and other federal services. The municipal boundaries of Florence touch practically the government properties of United States Nitrate Plant No. 2 and Wilson Dam. The United States has continuously during the period of the operation of said dam (beginning with the year 1926) had available a surplus of

[1] The other loan and grant agreements between defendants Sheffield, Tuscumbia and Decatur and the Public Works Administration now contain no provision requiring purchase of government-owned power. See Public Works Administration Dockets 3124, 3125 and 6587 respectively.

power (not required for governmental use), and a part of that surplus has been sold to the extent of its requirements to Alabama Power Company under a contract between that company and the War Department, and later with Tennessee Valley Authority. The amount of such sales has varied from one hundred sixty-five million kilowatt hours as the lowest amount delivered in 1928, to five hundred fifty-seven million kilowatt hours delivered in 1927 (Fdgs. 167-173; R. 1089-90).

Alabama Power Company is supplying electrical energy to the City of Florence at this time, but its thirty-year franchise expired in the year 1933, and at this time no utility company has a franchise to operate in the City. The City of Florence has been concerned and active for many years prior to the Tennessee Valley Authority Act about procuring complete navigation of the Tennessee River and securing for itself municipal distribution of power (Fdgs. 167-173; R. 1089-90).

By the constitution and laws of the State of Alabama a municipality is authorized to engage in the business of manufacturing and buying and selling power. This is not denied by appellants and is affirmatively ascertained by the final decree in the trial court.

Be it further said that it is a part of the public policy of the State of Alabama that municipalities and other public corporations are not only authorized but are actually and actively encouraged to engage in such business.

The following legislative items may be noted to that end:

1. The Carmichael Act (Alabama Acts, Extra Session 1933, No. 107) under which the proposed loan and grant by the Public Works Administration to the City of Florence involving this case will be consummated is published in the acts of the extra session in the Alabama extra session of 1933 at page 100. It authorizes cities and counties to purchase or construct power and distribution system and to operate them and to borrow money for said purposes. Two items of the act are of particular interest. One authorizes the bor-

rowing of money with lien bonds which shall not comprise the general obligation of the municipality. The other declares (Section 8) that the purpose of the act is to further enable corporations to acquire power "from the United States Government or other power stations, such as that now located at Wilson Dam, Alabama."

2. House Bill 136, Acts 1935, authorizes the sale of public bonds to the United States at private sale without advertisement.

3. House Bill 128, Acts 1935, provides for the incorporation of "improvement authorities" which are public concerns and authorized to engage in the enterprise of furnishing among other things lighting or power service.

4. House Bill 130, Acts 1935, provides for the creation of power districts which may conduct and operate utilities for the production, transmission or distribution of electric energy.

5. House Bill 133, Acts 1935, provides for the formation of non-profit membership corporations for the purpose of promoting the fullest possible use of electric energy in Alabama at the lowest cost consistent with sound economy and prudent management.

6. House Bill 135, Acts 1935, creates the Rural Electrification of Alabama.

7. House Bill 155, Acts 1935, creates the Public Works Board of Alabama. This Board has the duty of checking and approving the financial operations of the several public corporations created by other acts.

8. House Bill 509, Acts 1935, authorizes cities and public corporations to enter into contracts with governmental agencies for the acquisition of electric systems.

9. House Bill 482, Acts 1935, authorizes public corporations, among other things, to construct, operate and maintain certain public facilities including electric light and power systems.

10. House Bill 640, Acts 1935, creates the Alabama Industrial Authority "for the purpose of relieving unemployment by sponsoring new industries in the State of Alabama and by rendering financial and other assistance."

11. House Bill 509, Acts 1935, authorizes public corporations operating electric systems to enter contracts with governmental agencies for the purchase and sale of electric energy.

QUESTIONS PRESENTED.

1. Whether complainants are in this action entitled to injunctive relief suspending the City of Florence, Alabama, from entering into or performing a contract with the Tennessee Valley Authority for the purchase of electric energy from the latter.

2. Whether complainants are entitled to injunctive relief in this action forbidding the City of Florence, Alabama, to accept or expend any loan funds received from the Tennessee Valley Authority, the Federal Administration of Public Works or other agencies of the United States for the purpose of constructing a public system for the distribution of electric power to be supplied by the Tennessee Valley Authority directly or indirectly.

These questions concern both the propriety of a decision on these questions in this action and the substantive reasons for not granting such relief.

THE PLEADINGS AND TRIAL.

Supplementing the statement carried in the brief of Tennessee Valley Authority, the following is suggested:

Prayer for relief in the original bill is shown at pages 91 to 98 of the Record. It carries twenty-seven items of relief sought. Of these items Nos. 26 and 27 relate to the cities, and they pray for:

> 26. Injunction against contracts by the cities with Tennessee Valley Authority for distribution of power at schedules prescribed by Tennessee Valley Authority.
>
> 27. Injunction against City defendants from aiding or abetting the Tennessee Valley Authority in making effective any of the alleged wrongs complained of in the bill.

It does not appear by the bill that the City of Florence has any contractual relationship with Alabama Power Company which is attacked or sought to be enjoined. It does not appear by the bill that defendant Cities are parties to the contracts dated January and August, 1934, between Alabama Power Company and Tennessee Valley Authority, which are by the bill alleged to be illegal and *ultra vires* Tennessee Valley Authority and *ultra vires* Alabama Power Company. The injunction decreed against defendant City of Florence is against its purchase of power from Tennessee Valley Authority, and it does not appear that such proposed purchase of power is in any way dependent upon or related to the Alabama Power Company and Tennessee Valley Authority contracts sought by the bill to be enjoined and annulled.

On the motion of the City of Florence to dismiss the bill, it was seriously contended, not only that complainants as stockholders had no place in court on any part of the pending action, but that the bill is multifarious and that the City is improperly joined as a defendant, and that separate causes of action are improperly joined. It was the theory of the City that an action (whether brought by these complainants or by Alabama Power Company itself) to enjoin an *ultra vires* contract between Tennessee Valley Authority and Alabama Power Company was an entirely distinct and separate and disconnected action from any cause that complainants might claim because Tennessee Valley Authority was in possession of Wilson Dam and distributing energy there and proposed to sell power to the City of Florence.

The trial court overruled the motion and rendered an opinion (R. 89). The determinations of law set out in the opinions seem at variance with the conclusion of the court in overruling the City's motion. The court declared that complainants were entitled to nothing more than to have Alabama Power Company as a corporation free from its *ultra vires* contract with Tennessee Valley Authority; and yet the court, by denying the motion of the City, held it into

the lawsuit when there was no pretense on the part of complainants that the City of Florence was connected with any of the contracts sought to be annulled. The District Court said:

> The right of the plaintiffs to succeed in their suit depends on a showing that the contracts with the Alabama Power Company were ultra vires or illegal and unexecuted, and that restitution was possible. The relief accorded to the plaintiffs, suing altogether in their capacity of preferred stockholders of the Alabama Power Company, extends no further than that the corporation be freed from the obligation of the claimed ultra vires or illegal transaction with defendant the Tennessee Valley Authority, and with its co-defendant and subsidiary, the Electric Home & Farm Authority, Inc. This relief would include the restraining of further execution and performance of the contracts between the Tennessee Valley Authority, the Electric Home & Farm Authority, Inc., and the Alabama Power Company. No other relief prayed for in the bill would be appropriate to plaintiffs, suing in their capacity as preferred stockholders of Alabama Power Company.

The court further in the same motion (R. 296-7) declares:

> The plaintiffs suing solely as preferred stockholders of Alabama Power Company should be accorded only the relief that it would be entitled to if it were the plaintiff, i. e., to have the ultra vires transaction set aside, the contracts canceled and their future performances enjoined.

On January 9, 1935, the District Court entered a temporary restraining order forbidding defendant municipalities to prosecute their applications for loans and grants with PWA. There were motions to dissolve the temporary restraining order, and the court denied the motions, and an opinion was rendered on February 11, 1935 (R. 376-87) wherein the court changed its attitude with regard to the extent of relief that might be granted under the bill and drew

away from the previously declared theory that plaintiffs on their own claims would be entitled, as a limit to their relief, to have Alabama Power Company freed from its obligation of *ultra vires* contracts with Tennessee Valley Authority. Among other things, the opinion declared (R. 371 *et seq.*):

> 1. Section 2 of the National Recovery Act authorizes loans and grants for municipal power plants, and the same is constitutional.
>
> 2. An Alabama city has authority to issue and sell its bonds for the construction of a power plant.
>
> 3. PWA is an authorized lender for this purpose.
>
> 4. The illegality, if any (in the transaction complained of by which the City will borrow from PWA and build a power plant), lies in the disability of Tennessee Valley Authority to engage in the business of creating and disposing of electric current within the State of Alabama in a manner having no relation to any constitutional power. The question is whether this claimed illegality extends to the loan or grant of money through PWA so as to make the loan and grant illegal and subject to be restrained by private utility injured by it.
>
> 5. Lawful competition by a government agency with a private utility is no wrong, and if the doing of the business was authorized, the competition could not be restrained.
>
> 6. If the engagement by the government agency in the power business was illegal, and if the PWA had knowledge of the proposed illegal business, the PWA loan to the municipality could be restrained.
>
> 7. The right of stockholders of Alabama Power Company to restrain a PWA loan in these circumstances after demand and refusal by the company to do so would be on the same basis as that of a stockholder to restrain TVA from engagement in illegal business after demand and refusal on the part of the corporation to act.

The opinion delivered in connection with the final decree (R. 376 *et seq.*) took the same double attitude. The court said (R. 377):

> I told counsel that while the bill contained many things, the only one that I would regard would be the validity of the contract or transaction between the Alabama Power Company which the preferred stockholders are assailing and the Tennessee Valley Authority. That is to say, the contract conveying the transmission lines and making certain arrangements about the interchange of power.

Thereupon, after this limiting declaration, which was in line with the opinion declared in November in overruling the motions to dismiss the bill, the trial court proceeded to declare the power business of the Tennessee Valley Authority to be illegal, the purchase and sale contracts between Tennessee Valley Authority and the municipalities to be illegal, and to restrain energy sales between Tennessee Valley Authority and the cities, and to enjoin the cities from borrowing money from PWA and constructing power plants.

The declared theory of the District Court was that Tennessee Valley Authority has the right to operate the generating facilities at Wilson Dam and has the right to dispose of a surplus which is incidental to such operation; that the disposal of any surplus which is not incidental to the federal uses of the generating system is illegal; that under the evidence in the Record the surplus of power above actual federal needs is not an incidental surplus and cannot be legally disposed of.

There was no ascertainment by the trial court, and no evidence to show, what the power demands of the City of Florence would be under its Tennessee Valley Authority contract; what the incidental surplus of energy would be on a legitimate operation of the generating units under the court's definition of legitimate operation and incidental surplus.

The expression of the court on the matter of surplus power was made in the opinion delivered in connection with the final decree. It appears in part at page 378 of the Record:

> It seems to me that the fair construction of the act might limit the right of the Tennessee Valley Authority to sell any energy that was not surplus energy, and it has that authority under the decision of the Supreme Court, as I understand it. It has a right to sell the surplus energy defined to be the energy over and above what the Tennessee Valley Authority creates for the use of some one of its granted constitutional powers, and used for that purpose; for instance, actuating of the locks with reference to navigation, the lighting of villages, or many other things of that kind, that give it the right to use electrical energy. If there is a surplus, recognizing the impossibility of making the exact amount of electric power to cover the needs, it has an implied right to sell any power created over and above that, provided that surplus is legitimately created.

The decree of the District Court was reversed by the Circuit Court of Appeals and the original complainants have brought their case here by certiorari.

ARGUMENT.

We do not deem it necessary to argue the merits of these questions at length. The brief filed by TVA has covered well the right of the Federal Government to sell and deliver power at Wilson Dam. From the standpoint of the City of Florence the same legal arguments apply and the substantive issue is a simple one.

The boundaries of the City of Florence practically touch the government reservation at Wilson Dam (Fdg. 167, R. 1089). Since 1926 the Alabama Power Company, petitioners' corporation, has purchased a large supply of power at Wilson Dam from the United States according to its needs. Other large quantities of power at that dam, because Alabama Power Company did not see fit to purchase it, have

gone to waste (Def. Ex. 97, R. 958). Alabama Power Company, continuously since 1926 and until this good date, has supplied power to the people of Florence largely through purchases made at the adjacent Wilson Dam (Fdgs. 172, 173, R. 1089-1090). Mr. Ashwander and his minority stockholders have never made any objection by court process, and, so far as appears by the Record, have never made objection in other fashion to such arrangements. So long as the Power Company, as a needless middle man, had a "take-out," the constitutional point was not interesting. As enthusiastic friends of the Federal Constitution, they made no complaint in the District Court, nor did they bring any case to this Court.

For years, the residents of Florence have been active in the effort to procure a municipal distribution of power under the laws of Alabama (Fdg. 171, R. 1080). Upon the passage of the TVA Act, Florence concluded a contract with the Authority for the purchase of power. The Supreme Court of Alabama approved the transaction as being consonant with the constitution and laws of that state. *Oppenheim* v. *City of Florence,* 229 Ala. 50, 155 So. 859. The attitude of the dog in the manger in Aesop's Fable has never been regarded as being equitable or just. Petitioners have brought here a case in equity. The bill seeks to enjoin the City of Florence from purchasing the same power that Alabama Power Company began to purchase in 1926 and the same power that it is still delivering to the City of Florence. There is no proper equity on which these minority stockholders can obtain an injunction to forbid this legitimate function and transaction which has been approved by the highest court of Alabama. Doubtless the barons of old felt much inward complaint when and as their activities in the levy of tribute were interfered with; but, on the historic elements of that business, would the chancery courts of England have enjoined the breaking up of these good old practices? In fine, the City of Florence wishes to buy the same power from the same Wilson Dam where Alabama

Power Company has bought power in years gone by. The minority stockholders have not recommended their company to cease these purchases, and their company is still engaged in that business, and yet they seek by chancery process to prevent the municipality from enjoying similar benefits. The facts speak for themselves, and no comment is needed to establish the inequity of their case. Their attitude is a plain assertion that they have a monopolistic right, exclusive of other qualified purchasers, to the power products at Wilson Dam.

Be it remembered that the bill makes no assertion of right and no claim on the basis of any franchise contract by the Power Company and the City of Florence. There was such a contract which expired by its own terms in 1933, and since that date Alabama Power Company has been in the City of Florence only by the sufferance of that town and the forbearance of its citizens.

As to the loan and grant between the City of Florence and the PWA, such a contract has been before the Supreme Court of Alabama in a litigated case and has been approved. Such a contract was drawn under the Carmichael Act of the 1933 session of the Alabama Legislature and approved in *Oppenheim* v. *City of Florence,* 229 Ala. 50, 155 So. 859. The contract now outstanding does not require the City to purchase power from the Authority as a condition to the loan and grant.

Separate litigation is pending, brought by Alabama Power Company and not by its minority stockholders, to test the right of PWA to make the proposed loan to the City of Florence. That case, or some similar case decisive of that issue, will hence reach this Court in due course. It does not properly belong in this Record.

There is no doubt that the City of Florence as a municipality is, under the statutes and constitution of Alabama, authorized to engage in the business of the manufacture and distribution of electric power, or that it is authorized

and empowered to borrow money to construct distribution systems, or that federal lending agencies have the right to make loans for such a purpose. These elements are declared in the opinion of the District Court, and the authority of the City is upheld in the late case of *Oppenheim* v. *City of Florence, supra.*

The bill is multifarious as to the City of Florence, and the City's motion to dismiss should have been sustained. The motion is carried at Record page 275, and the decree overruling it is shown at page 371.

Equity Rule 26 is as follows:

> The plaintiff may join in one bill as many causes of action, cognizable in equity, as he may have against the defendant. But when there are more than one plaintiff, the causes of action joined must be joint, and if there be more than one defendant the liability must be one asserted against all of the material defendants, or sufficient grounds must appear for uniting the causes of action in order to promote the convenient administration of justice. If it appears that any such causes of action cannot be conveniently disposed of together, the Court may order separate trials.

A bill cannot be sustained in equity which is multifarious and embraces distinct matters affecting distinct parties who have no common interest in distinct matters. *West* v. *Randell,* Fed. Cas. No. 17,724; *Walker* v. *Powers,* 104 U. S. 245, 26 L. Ed. 729; *Security Savings Association* v. *Buchannon,* 66 Fed. 799; *Howard* v. *Luce,* 171 Fed. 584.

The weight of the attack in this case, and the matter has been involved in other litigations before the Public Service Commission of Alabama, was against a proposed sale of transmission lines and distribution systems by Alabama Power Company to Tennessee Valley Authority. The bill seeks an annulment of those contracts. The questions as to whether the City of Florence may buy power from Tennessee Valley Authority, or may construct a distribution system, or may engage in the power business, or whether

the Tennessee Valley Authority may under the Constitution of the United States sell power to the City of Florence make wholly different and unrelated items. The City is not concerned with the purchase contracts between Tennessee Valley Authority and Alabama Power Company. It ought not to be forced to litigate that question. It is not a necessary or proper party to a bill that seeks the annulment of contracts declared to be *ultra vires.*

If Alabama Power Company or its stockholders are entitled to enjoin the engagement of Florence in the utility business, or a PWA loan and grant to Florence, that is a wholly separate and distinct piece of business entitled to be tried in a separate lawsuit. As already pointed out in this memorandum, the trial court, while declining defendant's motion to dismiss the bill, recognized the distinction in the alleged causes of action and declared that it would give relief only as against *ultra vires* the contract case.

This case presents, if any cause does, a multifarious complaint against which relief should have been granted by the court on motion.

The final decree is erroneous in enjoining a PWA loan and grant to the City of Florence.

Item 5 of the final decree (R. 385) makes the following judgment:

> The defendant municipalities, all of which, or the inhabitants of which, were supplied or served with electricity by Alabama Power Company on and prior to January 4, 1934, are hereby enjoined and restrained from entering into or performing any contract with Tennessee Valley Authority for the purchase from the latter directly or indirectly of energy to be created or acquired and transmitted or delivered by Tennessee Valley Authority, the Federal Emergency Administration of Public Works or any other agency of the United States, for the purpose of constructing a public distribution system for the distribution of electric power to be supplied by Tennessee Valley Authority, directly or indirectly.

The bill shows on its face that stockholders of Alabama Power Company did not request the corporation to bring any action for such relief, and there is no evidence in the Record to indicate such a demand. The bill does not pray for such relief. It was the thought of complainant, as disclosed in the bill, that the City of Florence was about to engage itself with Tennessee Valley Authority in a power program on a schedule of rates that was objectionable to complainants, and with the notion of establishing a basis of power costs that is known as a yardstick. It appears from the bill that complainants feared and sought relief against such a rate structure on the part of the City of Florence. Drawing the conclusion from the case in the bill, it is plain that George Ashwander, et al., never did have it in mind that the City of Florence would be guilty of a legal wrong in borrowing money from PWA, in constructing a power system, in buying power from Tennessee Valley Authority, or in distributing power. The wrong that Mr. Ashwander thought about was in having the City assist Tennessee Valley Authority in making a yardstick which he thought would reflect injuriously on the rates of his own company.

The relief granted at *nisi prius* has gone far beyond the scope of the original bill and the evidence and even any thought of complainants. It has gone beyond the scope of the District Court's own declaration in the early parts of the trial.

There is no occasion to insist here on the legal right of PWA to make a loan and grant to Florence, or on the legal right of Florence to construct a power system and engage in the power business. Those items have been ascertained and declared by the trial court, as pointed out above.

It is the City's contention now that, in addition to all the reasons already asserted against a recovery by complainants here, there should be no permanent injunction against a PWA loan by Florence and its construction of a power

system. Such engagements are wholly legal. And the trial court has found and pointed out in this cause that there is always a surplus of power in the operation of Wilson Dam. There is no legal reason why that legitimate surplus (no matter what it may be ascertained to be hereafter) should not be made serviceable to the inhabitants of Florence through the City's engagement in the power business along the lines of its present contracts.

If any court should hold the rate schedule illegal (as claimed in the bill), then injunctive process should be directed at that feature only in a proper and independent proceeding. Surely it is outside the law to enjoin the City from any PWA loan which will construct a power system for Florence when the power purchases of the town may be on a basis definitely legal.

Respectfully submitted,

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